

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**MAJOR GENERAL PAUL FLETCHER
and KATHY FLETCHER,**

Plaintiffs,

vs.

**DAMION LUPO, DAN PEÑA, ROBERT
PARK WILSON, MICHAEL PIERCE,
DENALI INVESTMENT GROUP, INC.,
and DPG WATTS, LLC,**

Defendants.

Civil Action Number
2:08-cv-1844-SLB

MEMORANDUM OPINION

On October 3, 2008, defendant Dan Peña removed this action from the Circuit Court of Jefferson County, Alabama, on the basis of diversity of citizenship. (Doc. 1). Plaintiffs Major General Paul Fletcher and Kathy Fletcher later amended the Complaint in this court, alleging state-law claims of breach of fiduciary duty, breach of contract, fraud, violations of the Alabama Securities Act, intentional infliction of emotional distress, civil conspiracy, and unjust enrichment against defendants Robert Park Wilson (“Wilson”), Denali Investment Group (“Denali”), and DPG Watts, LLC (“DPG Watts”), among others.¹ (Doc. 14). After repeated unsuccessful attempts of service on Wilson, Denali, and DPG Watts, plaintiffs moved the court for service by publication. (Doc. 67). The court granted the motion, and the Clerk of Court ordered publication of a notice of this action be made once a week for four consecutive weeks in The Birmingham News. (Doc. 76).

¹ All other defendants have been previously terminated from this action. (Docket Entry of March 2, 2011, and docs. 73 and 81).

On November 29, 2011, plaintiffs filed a Notice of Service by Publication, informing the court that service by publication was achieved effective November 21, 2011. (Doc. 82). As proof thereof, plaintiffs submitted an "Affidavit of Publication" by the Birmingham News Company. (Doc. 82-1). After Wilson, Denali, and DPG Watts failed to appear or respond to the action within 21 days of the date of last publication, the Clerk of Court entered a default against them pursuant to Federal Rule of Civil Procedure 55(a). (Doc. 88). Plaintiffs move under Rule 55(b) for a default judgment against Wilson, Denali, and DPG Watts.

On December 19, 2011, the magistrate judgment assigned to this case entered a Report and Recommendation, finding that plaintiffs' motion for a default judgment is due to be granted. (Doc. 89). Based upon the pleadings and evidence presented at a hearing, the magistrate judgment specifically found Wilson, Denali, and DPG Watts liable for the claims of breach of fiduciary duty, breach of contract, fraud, and unjust enrichment and jointly and severally liable for resulting damages in the amount of \$395,334.96, and attorneys' fees and costs in the amount of \$6,729.28. (*Id.* at 3). No objections to the Report and Recommendation have been filed within the time prescribed.

The court has considered the entire file in this action together with the magistrate judge's Report and Recommendation and has reached an independent conclusion that the magistrate judge's Report and Recommendation is due to be adopted and approved. Accordingly, the court hereby **ADOPTS** and **APPROVES** the findings and recommendation of the magistrate judge as the findings and conclusions of the court. In accordance with the recommendation, plaintiffs' Motion for Default Judgment (doc. 53), is due to be granted, and a default judgment in the total amount of \$402,064.24 is due to be entered against defendants Robert Park Wilson, Denali Investment Group, and DPG Watts, LLC and in favor of plaintiffs Major General Paul Fletcher

and Kathy Fletcher. An appropriate order will be entered.

DONE and **ORDERED** this 9th day of January, 2012.

A handwritten signature in black ink, reading "Sharon Lovelace Blackburn". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE